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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3188 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TRANSPORT MANAGER, AHMEDABAD MUNICIPAL TRANSPORT SERVICE
Versus
MAHESHKUMAR VISHNUBHAI JANI

Appearance:
MR RR MARSHALL for Appellant
MR KIRAN C MEHTA for Respondents No. 1-2

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE M.C.PATEL

Date of decision: 09/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. Admitted. Mr. Kiran C. Mehta waives service of notice in the appeal for the Respondents. On a joint request of the learned counsel for the respective parties, this appeal is taken up for final hearing today.

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 challenging the judgment and award of the Motor Accident Claims Tribunal passed under Section 163-A of the said Act. However, the same has been passed in the form of an interim award namely, as an order below Exh.5 in the main claim petition namely, Motor Accident Claim Petition No.1988 of 1999, which is still pending. The learned counsel for the respondents states that the impugned award has been delivered by the Tribunal as an interim award on the basis of the original claimants' application (Exh.5).

3. There cannot be any controversy that an award under Section 163-A is not an interim award, and is not adjustable against a final award delivered by the Tribunal under Section 168 of the said Act. This principle has been clearly laid down by the Supreme Court in the case of The Oriental Insurance Co. Ltd. vs. Hansrajbhai V. Kodala reported in 2001 (4) JT 477.

4. In the premises aforesaid, in view of the clear position of law laid down by the Supreme Court, the impugned judgment and award is required to be quashed and set aside. We hold and direct accordingly. This appeal is, therefore, allowed with no orders as to costs.

5. It is clarified that the respondents - claimants are at liberty to pursue the main claim petition under Section 166 of the Act and to obtain a judgment thereon on merits and in accordance with law under Section 168 of the said Act. The Tribunal shall expedite the hearing of the claim petition under Section 166 of the Act.

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